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Supreme Court of the United States.

October Term, 1904.

HENRY LOCKHART, Appellant,
vs.
H. C. LEEDS, J. A. JOHNSON, JULIA A. JOHNSON, et al's.
No. 10.

BRIEF FOR APPELLANT.

J. H. McGOWAN,
Attorney for Appellant.

WASHINGTON, D. C.
Press of Gibson Brothers
1904.

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STATEMENT.

This is an equity case, brought into this Court on appeal from the Supreme Court of the Territory of New Mexico. The case was begun in the District Court for Bernalillo county, and tried on bill and demurrer.

The bill of complaint as amended (the second amendment) on which the hearing was had, will be found in the Record, beginning on page 34. That part of the Record preceding page 34 has no special bearing on matters to be heard by this Court.

The bill alleges, in substance, that on May 7, 1893, complainant Lockhart, and Benj. Johnson and Chas. S. Pilkey entered into a contract in the nature of a copartnership for the purpose of discovering and locating

mining claims. The contractors were all residents of Bernalillo county, New Mexico.

The contract provided, in substance, that Pilkey should prospect and locate such lode and placer claims as he might discover or know the existence of, in the name and for the joint benefit of all said parties, he to own one-third interest in such locations, and Lockhart and Johnson to own an undivided two-thirds interest. The latter parties were to furnish to Pilkey 25 lbs. of giant powder, 100 feet of fuse, one box of caps, one hammer, ——— pounds of drill steel, and one pick.

When Pilkey had sunk or driven a shaft or tunnel four by six feet to a depth of twenty feet from the lowest level of the surface at its mouth upon such vein and locality as should be designated by Lockhart and Johnson, he was to receive from them, in addition to the above-named articles, the sum of thirty dollars, less any money for provisions or other articles, except those above named, which should be furnished to him by them prior to the completion of said work.

The agreement provided that work should begin within twenty days, and should be prosecuted with diligence to the completion, and to the satisfaction of Lockhart and Johnson. Pilkey was to furnish his associates samples of the ore that he should discover, from time to time, on their request.

It was further agreed, that it should be at the option of Lockhart and Johnson to continue working or to abandon any claim located in pursuance of the contract at any time they might deem it proper. The agreement was to continue in force for one year, and all discoveries and locations made by Pilkey during that time were to be considered as covered by it. Pilkey was prohibited from contracting any debt, or making any contract, bind-

ing the other parties to the contract, unless they authorized him to do so in writing. It was also agreed that any concealment by Pilkey of a discovery, or failure to locate a valuable mineral claim, for the purpose of evading the terms of the agreement and defrauding his co-contractors, should result in forfeiting any right or interest, direct or indirect, he might have therein.

The contract was duly executed, and Lockhart and Johnson furnished the supplies and articles as agreed; furnished Pilkey in addition thereto with various provisions, paid him the money mentioned in the contract, and also other sums of money, and in all respects performed the terms of the contract as required on their part, and held themselves in readiness to continue to do so. A copy of the contract, as a part of the bill, is found on page 41 of the Record.

The bill alleges that the parties to this agreement had knowledge or information of the existence of mineral deposits in the northeasterly portion of said Bernalillo county, in the vicinity of the town known as Cochiti, and that it was their purpose that Pilkey should prospect in that vicinity; that he proceeded to said locality, and prior to July 10, 1893, found a lode or vein carrying both gold and silver, and took peaceable possession of a tract thereon 1,500 feet long and 600 feet wide; that in pursuance of the tripartite contract above set forth, and as evidence of such discovery and possession, Pilkey posted a notice on said premises, naming the claim as the "Sampson Mine," declaring it was located July 10, 1893. This notice bore the names of the three parties to the aforesaid contract had two witnesses and purported to be in compliance with the United States and territorial laws applicable thereto, and then in force. The notice is a part of the Record as Exhibit B, and found on page 42.

It is further alleged that Pilkey marked the boundaries of the claim on the ground in such manner that the same could be readily traced. At the request of Lockhart and Johnson he sent them samples of the ore taken from the claim, and in pursuance of their direction commenced sinking a shaft upon the lode to the depth of ten feet from the lowest rim thereof, and appellant is informed and believes and states that he did so sink a shaft to mineral in place, disclosing a large and valuable deposit of gold and silver-bearing ore in place within less than ninety days from the time he so took possession.

The bill states that the parties to said contract, having thus discovered and located said claim, not then knowing whether or not it was situated on public domain, and free and open to location under the mining laws of the United States, still performed the required acts of location under said laws, and the laws of the Territory, "and were ready, able and willing in all things to comply therewith, and would have so done except for the wrongful, fraudulent and unlawful acts of the defendants."

It is then alleged that on or about October 1, 1893, Pilkey, while thus in possession of the said claim in pursuance of the said contract "wrongfully and fraudulently conspired, combined and confederated with the defendants, H. C. Leeds, J. A. Johnson, Frank Fagaley and Lee Walker," to defraud said Lockhart and Benj. Johnson of their interest in and title to said mine and minerals discovered and possessed by them as aforesaid; that Pilkey, in pursuance of said conspiracy, entered into an agreement with said Fagaley, J. A. Johnson, Walker and Leeds, on, to wit, October 1st, 1893, the precise date being unknown to the complainant, in which agreement the defendant, Julia Johnson had some interest; that by this agreement it was provided that Pilkey, in violation and

fraud of the rights of his associates in the contract of May 7, 1893, should transfer, convey and deliver possession of said Samson Mine to said Fagaley, Johnson Walker and Leeds without the knowledge or consent of said Lockhart and Benj. Johnson, and that Pilkey should do whatever else was necessary to carry out the purposes of said conspiracy.

The bill further charges that defendant Pilkey (erroneously named as "complainant," Rec. 37.) "by an instrument in writing, the precise terms of which are unknown to the complainant, the same being in the possession of defendants, or some of them, sold, transferred and conveyed to the defendants, Fagaley, J. A. Johnson, Leeds and Walker, an undivided four-fifths interest in said mine and mineral, the said Pilkey retaining an undivided one-fifth interest therein, which was conveyed to said Walker by said instrument and by him held in secret trust for said Pilkey, and in pursuance of said fraudulent combination and conspiracy" (Rec. 37).

That the defendants, Fagaley, Johnson, Walker and Leeds, together with the defendant J. Q. Wills, "caused and procured the defendant Pilkey to stop work upon the said mines under his said agreement (meaning the agreement with Lockhart and Benj. Johnson) and to fail and neglect to record the said location notice, so by him posted thereon as aforesaid;" that some of the defendants removed the said location notice from the claim, and the defendants covered up or concealed the workings thereon which had been done and performed by Pilkey, and by collusion with him, without the knowledge or consent of the other parties to the contract of May 7, 1893, entered upon the Sampson Mine as heretofore described, and denied and continue to deny that said Lockhart and Benj. Johnson had any interest therein (Rec. 37.)

Having so procured possession of said mine, the said defendants, in pursuance of the conspiracy, caused to be posted upon said mine a location notice and filed the same for record in the recorder's office of said county, December 13 (30), 1893, and caused it to be recorded in book E, page 576, of mining records (Rec. 37). A copy of this notice is made a part of the bill of complaint herein and is found in the Record, as Exhibit C, page 43.

The complaint further states that the defendants, after taking possession, designated the mine in question as the "Washington Lode," but in the alleged location notice, copy of which is found on pages 43 and 44 of the Record, it is named the "Sunny South Lode." It is also disclosed (p. 44) that that notice is an amended one, the original having been made October 20, 1893.

The bill further sets out (foot of p. 37) that it was agreed between said alleged conspirators that for the purpose of concealing the interest of said Pilkey in said pretended location, that defendants Fagaley, Johnson, Walker and Leeds should each have one-fifth interest in the said mine and Pilkey should be entitled to the remaining one-fifth, which should be held in trust for him by said Walker.

The bill after having set out the foregoing facts, alleges that Benj. Johnson had conveyed all his interest in the premises to the complainant Lockhart; and then calls attention to the *Canada de Cochiti* grant, the exterior boundaries of which were supposed to include the location in question, but claims that this grant did not affect the complainant's rights in the premises, but insists that he is equitably entitled to the minerals contained in the claim, and has a prior and paramount right and title thereto as against the defendants or any or either of them (Rec. 38).

The claimed rights of all the defendants, other than Fagaley, Johnson, Walker, and Leeds, were derived di-

rectly or indirectly from them, as the alleged conspirators, and with full notice and knowledge of the rights of the complainant and of his aforesaid agreement with said Pilkey (Rec. 38).

At the foot of page 38 *et seq.*, it is set forth that complainant was advised that the mineral deposit so discovered and located by the said Pilkey was not subject to location as a mining claim under the laws of the United States for the reason that the same was situated within the alleged private grant to Antonio Lucero (the Cochiti grant) but insists that by virtue of the said prior discovery and possession of said claim and the work done upon it, the complainant became entitled to an equitable right that was not terminated by the conduct of Pilkey and his co-conspirators.

It is disclosed that defendant James Q. Wills commenced suit against defendants Leeds, J. A. Johnson, Julia Johnson, Wills, Fagaley, Walker, Pilkey and others wherein the title to the aforesaid, mine was said to be involved, and in said cause the Court appointed one Charles Bonsall as receiver of said mine, and hence he as such receiver was made a defendant herein (Rec. 39).

A copy of the location notice posted by Pilkey and removed by defendant (Exhibit B, p. 42) was duly recorded in the office of the recorder of Bernalillo county on December 9, 1893.

By virtue of the facts thus set out in the bill, the complainant claims to be the equitable owner of the mine in question, and entitled to the possession of it; that the pretended location by four of the five conspirators, namely, Fagaley, Johnson, Walker, and Leeds, was void; that Pilkey, by his conduct, has forfeited all rights in the premises, but that the defendants have refused to permit the complainant to enter upon or work the said claim.

In conclusion of the allegations of the bill, it is set forth that said mining claim is only valuable for the ores and minerals contained therein, and that the defendants are removing these.

It is prayed that defendants be required to answer without oath; that a receiver be appointed to take possession of the property in dispute, and hold such possession until the further order of the Court; that the contract between Pilkey, Fagaley, Johnson, Walker, and Leeds be decreed to be void and cancelled and annulled; that the location notice which the last-named defendants filed in the recorder's office be decreed to be void and of no effect as against complainant; that the defendants be enjoined from working the mine or removing the mineral therefrom; that the complainant be decreed to be the equitable owner of the ore and minerals contained therein, and entitled to the prior and preferential right to acquire the legal title from the United States, "and for such other and further relief as may be equitable and proper in the premises."

To this bill of complaint the defendants demurred, setting out *nine* alleged causes for demurrer (Record, 47 and 48). The cause went to hearing in the District Court on bill and demurrer, the demurrer was sustained and the bill ordered to be dismissed (Rec. 60).

From this order the complainant appealed, and the cause being heard in the Supreme Court of the Territory, the judgment of the District Court was affirmed (Rec. 62), and thereupon the case duly appealed to this Court (Rec. 63). The statement of facts and opinion of said Supreme Court are found on pp. 64, *et seq.*

An ejectment suit relating to this same property, and in which the plaintiff was the complainant herein, and the defendants substantially the same as in this cause, was

heard in this Court on appeal during the October term of 1900, and is reported in 181 U. S. 516. In that case this Court decided in substance that (1) the fact that the premises here in dispute were within the exterior limits of the *Canada le Cochiti* grant did not withdraw the land from entry under the mineral laws of the United States, and (2) that an action of ejectment to recover said mine could not be maintained on the facts disclosed by the record in that case, and the plaintiff must seek whatever remedy he might have in some tribunal other than a court of law.

The law, as found in that case, removes from consideration in this cause the special causes for demurrer numbered 5, 7, 8 and 9, as set out by the defendants on pages 47 and 48 of the present Record. These four alleged causes of demurrer are as follows:

5. Because it does not appear from said amended bill when the complainant acquired an undivided interest in said alleged grant with the heirs of Antonio Lucero, deceased, or what the nature, extent and amount of said interest is, or through what *mean conveyance* it was acquired.

7. Because it does not appear from the allegations in said amended bill that the defendants are not co-tenants with the heirs of Antonio Lucero, deceased, and have a larger interest and a better right to the possession of the surface ground of said claim than the complainant.

8. Because ownership in said alleged grant confers no interest in the mineral thereon, or the right to mine the same.

9. Because the complainant's remedy is at law and the amended bill does not state a case for a court of equity.

This leaves for consideration in the argument the following items of demurrer, given in substance:

1. That the defendants, Dunlap, Johnson, Leeds, and Walker, did not enter upon the claim prior to October 10, 1893, that is, within three months after the mine was said to have been located under the name of Sampson.

2. That the bill does not disclose that a valid location notice was ever posted upon the surface of the claim or recorded in the recorder's office.

3. That it does not appear from the bill that the locators ever did the work required by law to be done within three months after taking possession or otherwise complied with the law.

4. That the agreement between complainant Johnson and Pilkey, was subject to revocation by either party thereto at any time, and the facts alleged in the bill amounted to an abandonment of said Sampson claim under said agreement.

6. That it does not appear that at the alleged time of entry by Dunlap, Walker, Leeds, and Johnson, the complainant or his co-locators under the Sampson location were in possession of the claim, or any part of it, or had any lawful right to such possession.

ASSIGNMENT OF ERRORS.

1. The Court erred in holding that the facts set out in the bill of complaint would not sufficiently apprise the defendants as to what they were called upon to answer.

2. In holding to the effect that the neglect and failure of Pilkey, in pursuance of the conspiracy set out in the bill of complaint to record the location notice, was not sufficient to warrant a remedy in a proceeding in equity, in the absence of allegations in the bill showing why complainant did not file the notice for record.

3. That the complainant had an adequate and complete remedy at law.

4. That the prayers of the bill, including the prayer for general relief, were not sufficient to warrant the Court in holding the defendants as trustees of premises for the benefit of the complainant.

5. In affirming the decree of dismissal made by the district court.

Argument.

I.

Were the facts set out in the bill sufficient to apprise the defendants what they were called upon to answer?

The bill filed in this case, May 26, 1894, was the first attempt of the complainant to secure his rights in the premises by an appeal to the courts. The details of a conspiracy are not readily ascertained. The contract between Pilkey and his partners was signed May 7, 1893.

By the terms of this contract Pilkey was to discover and *locate* mines for the common benefit of his associates and himself. The *location* involved not only marking the boundaries on the ground and sinking the requisite shaft, but also of posting the notice on the premises and filing a copy of it for record. This was clearly his duty under the contract. Lockhart and Johnson were to furnish him tools, money, etc., but of necessity it was his contract-duty to see to all matters necessary to fix title to his discoveries in the partners. Pilkey discovered and went into possession of the mine July 10, 1893, in pursuance of the contract. Before the 90 days had expired within which the local law required the preliminary work to be done and the location notice to be filed in the recorder's office, the four defendants named, and Pilkey, had entered upon the scheme to defraud the complainant. In pursuance of that scheme Pilkey secretly neglected to finish the

required work, or to record the requisite notice; undertook, by some kind of writing to convey the title to the whole mine to his co-conspirators, reserving for himself a one-fifth interest, which was to be held for him in trust by Walker; the conspirators removed the location notice that had been duly placed on the mine, and covered up or concealed the work which had been already done; and without the knowledge or consent of Pilkey's co-partners, Lockhart and Benj. Johnson, entered upon the occupancy of the premises.

The premises thus occupied by Fagaley, J. A. Johnson, Leeds, and Walker, and afterwards claimed as the "Washington Mine," were identical with the premises located and marked on the ground by Pilkey and named the "Sampson Mine," of this there has been no dispute. The two location notices, the one put up by Pilkey and the one put up by the conspirators, clearly show this identity. The bill and the exhibits accompanying it further show that the complainant secured a copy of the notice which his partner, Pilkey, had posted on the "Sampson" and which had been removed by the conspirators, and filed it and had it duly recorded in the proper office, on December 9, 1893, and that the alleged location notice of the so-called "Washington Mine," or "Sunny South Lode," was not filed for record until December 30, 1893—some twenty days later.

Certainly these facts, standing as proven, show that Fagaley, J. A. Johnson, Leeds and Walker got possession of the mine and kept such possession, denying that complainant had any interest in it, and filed the notice in the recorder's office, renaming the location—all with the intention to defraud, and in fraud of complainant's rights. Here are the allegations and facts constituting the charge and consummation of a fraud. They are admitted as they stand in the bill.

"If there be any one ground upon which a court of equity affords relief with more unvarying uniformity than on any other it is an allegation of fraud, whether proven or admitted."

Atkins *v.* Dick & Co., 14 Pet. 114; L. Ed. 10, 378.

In that case the defendants had demurred to the bill, first, for want of proper parties; second, for want of sufficiently specific facts as to certain details; and third, that the bill contained no matter or grounds on which the Court could grant the relief prayed for.

The Court stated that while the bill was somewhat inartistically drawn, yet the import of the language could be understood, and, based upon such liberal construction of the pleading, found the fraud sufficiently alleged, the relief prayed for (injunction and general relief) sufficient, and directed the court below to overrule the demurrer and order the defendants to answer.

In U. S. *v.* Am. Bell Tel. Co., 128 U. S. 315; L. Ed. 32, 450, this Court held that it is sufficient in stating the facts constituting fraud in a bill in equity, if the main facts or incidents which constitute the fraud be fairly stated so as to put the defendant upon his guard and apprise him of what answer may be required of him.

The rule is also given in Gould's Eq. Pr. Sec 176, to the effect that where the facts constituting the cause of action are supposed to lie in the knowledge of the defendant, but not of the plaintiff, less particularity of statement is required than would otherwise be necessary.

In Enc. Pl. and Pr. Sec. 271, it is laid down that where the facts to be alleged are peculiarly known, or presumed to be known, to the opposite party, less certainty and particularity are required than in ordinary cases. (See also Shipman Eq. Pr. Sec. 231.)

It is difficult to ascertain what counsel and court mean

by declaring that the facts set out in the bill did not sufficiently apprise the defendants what kind of answer they were called upon to make.

II.

Is the complainant entitled to equitable relief in the absence of allegations showing why he himself did not record the location notice within the required ninety days?

The Court says: "The failure to file a location notice for record works a forfeiture of a mining location and leaves the claim open to relocation. There is no allegation in the bill showing that the appellant could not himself have filed this location notice for record within the ninety days. It contains no allegation that appellant relied upon the defendant Pilkey to file it."

Then, continuing, the Court says: "It is true that there is an allegation that the defendants caused and procured the defendant Pilkey to fail and neglect to record it," and further, that in pursuance of a certain agreement set out in the bill, the defendants "procured the defendant Pilkey to withhold said location notice from record." And the Court then declares that these allegations do not excuse the absence of allegations showing why complainant had not himself filed the location notice for record within the 90 days.

We reply to this:

1. That the contract between Pilkey and his partners required him to do everything necessary to fix the title to the claim in the firm. The other members of the firm had the right to rely upon him to do this. He was to *locate* the mines. This included marking the boundaries, sinking the shaft, putting up the discovery notice, and in due time recording it. Pilkey so understood the con-

tract, and so did his co-conspirators. They knew Lockhart and Benj. Johnson were relying on Pilkey to look out for the recording, hence it was agreed that he should not record the notice, and his failure should not be disclosed to his partners. The firm was formed to acquire the title to mines. Two members of the firm were to furnish the tools, money, and so forth, and the third member was to do the rest. He alone could determine the date of discovery. It certainly was his duty, as between himself and his partners, to put up the discovery notice on the premises. He must prepare and post it. He alone, primarily, would know what it contained. It certainly was his duty to make the required copy for filing in the Recorder's office. The recording was as necessary in fixing title in the claimants as posting notice on the mine or sinking the shaft.

2. If, responding to court and counsel, we admit, for the sake of the argument, that either of Pilkey's partners might have properly filed the notice for Record, yet they certainly were under no greater obligation to do so than was Pilkey. Then if the three partners were equally charged with the duty of recording the notice, and one of them determined, without the knowledge of the others, to abstain from the performance of that duty, the hazard of losing title to the claim was greater by at least one-third than it would be if no such determination was reached. Now, the position of the defense is, that although it was the duty of Pilkey to see to the recording, it was also the duty of the complainant. If then the conspirators could induce Pilkey to withhold the notice, and for any reason his partners did not file it, they could safely reap the reward of their wrongdoing.

3. We say that the failure to maintain possession of the claim, and do the development work, were the principal

factors of our safety. Had Pilkey continued the possession for himself and his partners, and finding himself unable to complete the work within 90 days from the date of his discovery notice, he could have made a new location, put up a new notice, and taken time to comply with the statute as to size and depth of shaft. No outside party could have crowded him from the claim. If any questions had arisen they would have been between the locators and the Government.

Section 2324 of the Revised Statutes provides the conditions on which mineral claims can be acquired and held, and adds:

"And upon a failure to comply with these conditions, the claim or mine on which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location."

4. The defendants having admitted that they induced our partner to abandon the ground, to fail to record the notice, and to finish the work, are not in position to say that all necessary things could not have been done on or before October 10. And here it may be added that if Lockhart or Benj. Johnson had duly filed the notice for record before the 10th of October, yet the conspirators having prevented the completion of the shaft, would thus have defeated our legal title quite as effectually as the Court claims it was defeated by the failure to record.

Neither can it be true, under the admissions, that defendants depended on anything but their own scheme of fraud with Pilkey to get and hold possession of the mine. Having taken advantage of their own fraud they can claim no immunity by alleging negligence on the part of complainant.

III.

The third contention, that the complainant had an adequate and complete remedy at law, has been fully disposed of by the decision in the ejectment case (181 U. S. 516) above mentioned.

IV.

Are the prayers of the bill, including the prayer for general relief, sufficient to warrant the Court in holding the defendants as trustees of the premises for the benefit of the complainant?

The prayers of the bill are:

1. That the defendants be required to answer but not under oath.

2. That a receiver be appointed to take possession of the property, and hold such possession until the further order of the Court.

3. That the contract between Pilkey, Fagaley, Johnson, Walker and Leeds be declared to be void and cancelled and annulled.

4. That the location notice which the last-named defendants filed in the recorder's office be decreed to be void and of no effect as against complainant.

5. That the defendants be enjoined from working the mine or removing the mineral therefrom.

6. That the complainant be decreed to be the equitable owner of the ore and minerals contained therein and entitled to the prior and preferential right to acquire the legal title from the United States.

7. The general prayer for such other and further relief as may be equitable and proper in the premises.

When the bill was drawn this Court had not decided

that the Mexican grant, within whose exterior limits the location was made, did not reserve the land from mineral entry under the ordinary laws of the United States. The decision in the ejectment case, above cited, makes it unnecessary to consider the third and fourth prayers.

But we urge that the remaining prayers furnish sufficient basis to authorize the Court, upon the confessions made by the defendants, to direct that a receiver be appointed, the defendants enjoined from working the mine, and the complainant decreed to be the equitable owner—the defendants holding the legal title for his benefit.

The charge that the defendants secured the legal title by fraud, must be considered as admitted by the demurrer. The sixth prayer is that the complainant be decreed to be the equitable owner. This, coupled with the general prayer, would authorize a decree declaring the defendants as holding the legal title in trust for the equitable owner. It is a rule of equity pleading that if the special prayer does not warrant a decree for the complete relief which the case discloses should be granted, the Court may yet afford a relief under the general prayer agreeable to the case made by the bill. Story Eq. Pl., Sec. 40.

Especially is this true where the required relief is not at variance with the relief sought by the special prayer. This rule covers the conditions disclosed by the sixth prayer and the general prayer in this case. If the court may under the first, hold the equitable title in the complainant, then very properly and logically the general prayer would authorize a decree declaring the defendants trustees, and directing them to make over the legal title to the complainant.

Again the rule seems to be that in cases where the facts established by proofs or admission clearly indicate to the Court the character of the relief that equity should apply,

the Court will grant the relief under a general prayer, although such relief is not specially prayed.

In Stanley *v.* Valentine, 79 Ill. 544, the Court says:

"No rule in chancery is more familiar than that other than the relief prayed for will be granted under the general prayer when consistent with the facts stated in the bill."

This rule was adopted in Hopkins *v.* Snedaker, 71 Ill. 449, where the court declared:

"The point is made that the decree does not conform to the prayer of the bill; but there was a prayer for general relief, and where a bill contains a prayer for general relief, and also a prayer for specific relief, the complainant may have other specific relief provided it be made consistent with the case made by the bill and with the proofs."

The same rule is held in Espinola *v.* Blasco, 15 La. 426, where 7 La. 51, is also cited. See also, Hilleary *v.* Hurdle, 6 Gill, 105; McIntyre *v.* Philadelphia, 24 Penn. 439; Van Voorhis *v.* Bond, 110 Mich. 3; Webster *v.* Harris, 16 Ohio, 490.

Holden *v.* Holden 24, Ill. Appellate, 106.

This was a case involving the title to real estate. The solicitor in his bill prayed for a different relief from that to which he was under all the facts in his case entitled. The court in deciding the case said:

"There was in this bill the prayer for general relief as follows: 'That your orator may have such other relief in the premises as equity may require and the court may deem just.' Under that general prayer the Court could grant the relief appropriate to the facts although the bill was not framed with a view of getting such relief.

"If the facts stated entitled the complainant to certain relief it matters not that such statement of facts may have

been made with the purpose and belief, on the part of the solicitor who drafted the bill, that the relief sought might flow from a different source of equitable jurisdiction." Citing McNeary *v.* Eastland, 10 Urg. 309; Vansant *v.* Allen, 23 Ill. 30.

If the rule found in these various cases is a correct one, the Court in the case at bar has ample authority, so far as the prayers of the bill are concerned, to grant such relief as may be consistent with the case made upon the admitted facts.

We respectfully urge that as the defendants are made up of the conspirators, and those holding under them with notice, that the case should be returned to the lower court with directions to enter a decree declaring the defendants trustees holding the said mining property for the use of the complainant, and directing them to convey the legal title to him.

J. H. McGOWAN,
Attorney for Appellant.